

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-1(b)	
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<i>Counsel for DPEG Fountains, LP</i>	
In re:	
BED BATH & BEYOND INC., <i>et al.</i> ,	
<div style="text-align: right;">Debtors.¹</div>	

Chapter 11
 Case No. 23-13359 (VFP)
 (Jointly Administered)

SUPPLEMENTAL OBJECTION AND JOINDER BY DPEG FOUNTAINS, LP IN FURTHER SUPPORT OF ITS OBJECTION TO DEBTORS' MOTION FOR ORDER AUTHORIZING DEBTORS TO ASSUME AND ASSIGN LEASE FOR STORE NO. 126

DPEG Fountains, LP ("DPEG" or "Landlord"), by and through its undersigned attorneys, hereby submits this supplemental objection and joinder in further support of its objection to the above captioned debtors ("Debtors") motion for an order authorizing the Debtors to assume and

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

assign the Lease (defined below) for Store No. 126 (the "Supplemental Objection/Joinder"). In support of this Supplemental Objection/Joinder, Landlord respectfully states as follows:

PROCEDURAL BACKGROUND

1. On April 23, 2023, the Debtors filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.

2. The Landlord owns real property in a shopping center located at The Fountains on the Lake, 12520 Fountain Lake Circle, Stafford, TX, 77477 (the "Shopping Center" or "Leased Property"), which has, in, part been leased to Stafford Bed Bath & Beyond, Inc. ("BBB") pursuant to an Agreement of Lease between the Landlord and BBB (the "Lease").

3. On May 25, 2023, the Debtors filed the Notice of Lease Auction and Potential Lease Sale Hearing [Docket No. 456], in which it listed the Lease as one of the leases to be sold at auction.

4. On June 23, 2023, the Debtors filed the Notice of Phase 1 Lease Auction, Qualified Bids, Lease Sale Hearing, And Related Lease Information [Docket No. 905], in which it listed the Lease as one of the leases to be sold at auction.

5. On June 27, 2023, the Debtors filed a Notice of Successful and Backup Bidder with Respect to Phase 1 Auction of Certain of the Debtors' Lease Assets and Assumption and Assignment of Certain Unexpired Leases (the "Auction Notice"). [Docket No. 1114]. The Auction Notice provided that the Lease covering the Leased Property was one of the leases the Debtors proposed to assume and assign to Burlington.

6. On July 13, 2023, DPEG filed its *Amended Objection by Landlord DPEG Fountains, LP to Debtors' Proposed Assumption and Assignment of Lease* (the "Objection") [Docket No. 1344]. The Objection contends, among other things, that the proposed assumption

and assignment of the Lease should not be approved because it would violate the protections afforded landlords pursuant to Section 365(b)(3)(C) and 365(b)(3)(D) since DPEG has a lease with another tenant (Ross Dress For Less) which prohibits Burlington being a tenant at the Shopping Center. In support of the Objection, DPEG filed the certification of Nikhil Dhanani (the "Dhanani Certification") [Docket No. 1573].

7. On July 17, 2023, Michaels Stores, Inc. filed a reply to landlord Pinnacle Hills, LLC's objection regarding the proposed assumption and assignment of store no. 1142 ("Michaels' Reply") [Docket No. 1383]. In Michaels' Reply, various legal arguments are asserted in an attempt to persuade the Court that the proposed assumption and assignment should be approved even though the assumption/assignment would violate/breach other tenant leases held by the landlord, which in turn would violate the provisions of Section 365(b)(3)(C) and 365(b)(3)(D) (the "Michaels' Arguments").

8. Since the Michaels' Arguments will likely be similar to the arguments raised by the Debtors and Burlington in favor of the proposed assumption and assignment of the Lease, the Debtors and DPEG have agreed to have a hearing on the Objection and Supplemental Objection/Joinder on the same day as the hearing on the proposed assumption and assignment of the lease relating to the Michaels' Arguments.

9. Accordingly, DPEG and the Debtors have tentatively agreed² to an August 30, 2023 hearing date on the Objection and Supplemental Objection/Joinder, which is when the hearing on the Michaels' Arguments is anticipated to go forward.

SUPPLEMENTAL OBJECTION/JOINDER

10. The Landlord hereby incorporates the Objection and Dhanani Certification.

² As part of the tentative agreement, the Debtors and DPEG detailed: (i) a briefing schedule, which included DPEG's deadline of today for filing its brief; and (ii) certain facts that would be contained in a stipulation.

11. In short, DPEG believes the Court should reject the Michaels' Arguments and deny the proposed assignment of the Lease to Burlington because: (i) the use/exclusivity provision in the Ross Dress For Less lease prohibits Burlington from being a tenant in the Shopping Center; and (ii) the unambiguous, plain meaning of Sections 365(b)(3)(C) and 365(b)(3)(D) requires that the use/exclusivity provisions in the Ross lease be respected. Further, in response to the Michaels' Arguments, DPEG incorporates and joins in the legal arguments set forth in: (i) *Pinnacle Hills, LLC's Sur-Reply In Further Support of Its Objection to Debtors' Motion For Order Authorizing Debtors to Assume and Assign Lease for Store No. 1142* [Docket No. 1926]; and (ii) *Supplemental Objection In Further Support of Opposition of Daly City Serramonte Center, LLC to Debtors' Motion For Order Authorizing Debtors to Assume and Assign Lease for Store No. 3108* [Docket No. 1929].

RESERVATION OF RIGHTS

12. Landlord reserves the right to make such other and further objections as may be appropriate based upon any new information provided by the Debtors or Burlington, including requests for adequate protection under Section 363(e) of the Bankruptcy Code.³ Further, the Objection addresses other issues, such as cure amount, which are unresolved. Depending on whether the Objection and Supplemental Objection/Joinder are sustained, the Court may be required to address these issues and DPEG reserves its rights relating to all of these issues.

WHEREFORE, the Landlord respectfully requests that the Court enter an order denying the proposed assignment of the Lease to Burlington, and provide Landlord with any other relief the Court deems just and proper.

³ Section 363(e) provides in pertinent part: "Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest."

Dated: August 18, 2023

PORZIO, BROMBERG & NEWMAN, P.C.

By: /s/ John S. Mairo

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